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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 199

PETER VINCENT CROLICH, SR., RAY WILSON FAIRCHILD and CHARLES JAMES HOLMAN, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF ON BEHALF OF PETITIONERS

QUESTION FOR DECISION

Mr. Justice Frankfurter stated in his opinion in **Bay Ridge Operating Company v. Aaron,** 334 U. S. 446, 484: "On the question you ask depends the answer you get". Hence, it is of vital importance that the statement of the question for decision be made with exactness and precision.

We respectfully submit that an answer to the question posed in the Brief for the United States (Government's Brief, p. 2) will not decide this case. In our opinion there are at least two questions here, as set out

in our Petition, page 2, viz: the nature of the right protected by 18 U. S. C. 241 (personal right of identifiable groups as distinguished from the general public right to an honest election), and second, the nature of the conspiracy (to affect the election to Federal offices). The effort on the part of the Government to reduce this case to a single question makes the question posed much too broad, and, with due deference, we suggest that the question as set forth in the Brief of the Government is incorrectly stated in at least two respects, viz.:

(a) It is stated in the Government's Brief on page 2 in the question for decision that the indictment charges a conspiracy "to injure qualified voters". We think the indictment charges otherwise. The precise words found in paragraph 5 of the indictment (R. 12) are that certain persons conspired

> "to injure and oppress citizens of the United States, viz., the legal and qualified voters of the aforesaid First Congressional District of Alabama".

The distinction between what the indictment charges and the statement of the question in the Government's Brief will be hereinafter shown.

(b) It is stated in the Government's Brief on page 2 in the question for decision that the indictment charges a conspiracy "to injure qualified voters in the free exercise of their right to vote in a primary election for candidates for United States Senator and Congressman". This might mean that the indictment charges one of two possible things; either (1) the qualified voters were deprived of their right to vote in a primary election in which a United States Sen-

ator and Congressman sought office, even though such voters did not intend to and did not vote for Federal candidates; or (2) the qualified voters were deprived of their right to vote for a candidate for United States Senate and a candidate for Representative in Congress in a primary election held for such purpose. Obviously, if the indictment charges (1), the indictment is invalid in that if a voter did not intend to and did not vote for a candidate for United States Senate or Congress, then no Federal offense is involved even if he were deprived of his right to vote for candidates for state office. We assume that the Government is contending that the indictment charges the second alternative, but we fail to find where the indictment charges that the qualified voters were prevented from voting for a candidate for the United States Senate or Representative in Congress, nor do we find where the indictment charges that any voters voted for such candidates and that their votes were not honestly counted. Actually, the indictment charges a dilution of the votes of the qualified voters in the First Congressional District of Alabama. In no place does the indictment state that such voters were prevented from voting for a candidate for Federal office, nor that their vote was dishonestly counted if they did so vote. (See Record page 13, 14, Paragraphs 6, 7, 8 and 9 of the indictment).

Therefore, the question presented, accurately stated, is whether an indictment is valid which charges a conspiracy to injure all of the voters of the First Congressional District of Alabama by preventing them from voting or by diluting with illegal votes the votes of all of the voters in the First Congressional District of Alabama in an election in which candidates of-

fered for Federal office, even though the indictment does not charge (1) that said voters attempted to or did vote for the candidates for Federal office, or (2) that illegal votes were cast for a candidate for Federal office.

ARGUMENT

A. The distinction which we seek to make between "qualified voters" and the "voters in the aforesaid First Congressional District of Alabama" is vital. The cases involving 18 U. S. C. 241 which have reached this Court have enunciated the following propositions, viz.: A citizen of the United States is protected by the statute in an election involving candidates for Federal office against a conspiracy to deprive him of the right (a) to vote, **United States v. Mosley,** 238 U. S. 383, and (b) to have his vote honestly counted. **United States v. Saylor,** 322 U. S. 385. But the general public is not protected against dishonesty in elections. **United States v. Bathgate,** 246 U. S. 220.

The effect of the Court sustaining this indictment is to broaden the scope of 18 U. S. C. 241. Although the indictment in places charges that the voters of the First Congressional District were prevented from voting (paragraph 6, R. 13), it also states that all of the voters in the wards in which the dishonesty is alleged to have taken place actually voted (paragraph 2, R. 10, 11). Therefore, the indictment really complains of the fact that the votes of all said voters were diluted by illegal votes. Since the indictment alleges that the voters in the First Congressional District were injured by the conspiracy, it obviously is seeking to bring within the coverage of the Act dishonesty in elections. If the voters of the First Congressional

District were injured by the dilution of the votes cast, then the offense charged is necessarily against all of the voters in the District and is, therefore, an offense against the public, the offense consisting of dishonesty in elections. If the indictment had alleged that the conspiracy injured certain voters, viz., those voters who voted for Hill for the Senate and Boykin for Congress, because illegal votes were cast for the respective opponents of Hill and Boykin, then the voters who voted for Hill and Boykin would have been injured in that their votes would have been diluted, but those voters who voted for their respective opponents would not have been injured because they were allowed (1) to vote, and (2) their votes were not diluted. If the voters who voted for the respective opponents of Hill and Boykin were injured at all, their injury consisted of deprivation of their right to have an honest election, a right not protected by 18 U. S. C. 241.

This distinction which seems so clear to us is illustrated in the case of **Chavez, et al v. U. S.** 261 F. 174 (C.C.A. 8th). The indictment in the **Chavez** case alleged that the defendants conspired "to injure and oppress certain citizens of said State and of the United States in the free exercise and enjoyment of certain" Federal rights and privileges i. e., "the rights and privileges appertaining .... to all the legally qualified voters at said election voting in said State of New Mexico". The Court held the indictment void, stating:

> "It needs but a glance at the language of the indictment above quoted to show that it proceeds upon a broad conception of the statute held in the Bathgate case to be erroneous. The conspiracy charged is, in apt and ex-

> press words, against the right of the candidates and **the voters in the state at large**—the right of the former as standing for office and of the latter not distinguishable from the general public interest." (black type supplied).

B. It is assumed that the Government contends that the indictment alleges that the legal voters who were prevented from voting attempted to or would have voted for a candidate for Federal office. It is further assumed that the Government contends that the indictment charges that the defendants in casting illegal votes actually voted for a candidate for Federal office. But we fail to find such allegations in the indictment.

Section 6, 7, 8 and 9 of the indictment (see Record pages 13-14) set forth the acts which were done in furtherance of the conspiracy. Summarizing these sections, they charge that the defendants did prevent the voters from casting a ballot in said election by impersonating said voters and voting in their stead; that illegal votes were cast with the intent that they be counted as a part of the total vote in said election, thereby diluting the votes honestly cast; and that the defendants did cause the election officials to make a false return of the results of said election. In no place does the indictment allege that the legal voters who were prevented from voting attempted to or intended to vote for a candidate for Federal office, and in no place does the indictment allege that in casting the illegal ballots, the persons so casting said ballots actually voted for a candidate for Federal office.

In this connection see the cases of **United States v. Kantor**, 78 F. 2d 710 (C.C.A. 2nd) and **Blitz v. United**

States, 153 U. S. 308 discussed on pages 10 and 11 of the Petition.

Respectfully submitted,

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